IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17317 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL MEGHJIBHAI KUVARJIBHAI KHETANI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR VM PANCHOLI for Petitioner(s) : 1,
MR KRUNAL PANDYA A.G.P. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/09/2007

ORAL JUDGMENT

1. **RULE**. Mr. Krunal Pandya learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the parties, the

matter is taken up for final hearing today.

2. The case of the petitioner is that he is plying his bus between Ahmedabad – Mumbai as contract carriage. However, the checking squad of the respondent authority has often detained the bus and recovered a sum of Rs.2,000=00 on each occasion from the driver of the bus by way of compounding fees. According to the petitioner, this is done on the ground that the petitioner has been plying the bus as stage carriage and not as contract carriage and thereby he has committed breach of the term of permit issued in respect to the bus in question. It is the say of the petitioner that one bus bearing registration no. RJ 27 P 6788, which is being plied between Ahmedabad and Mumbai has been detained on several occasions and the driver of the bus has been compelled to pay a sum of Rs.2,000=00 by way of compounding fees and that has been paid by the driver to avoid any detention of the vehicle and the resultant hardship to the passengers of the bus. It is the say of the petitioner that the checking squad of the Regional Transport Authority cannot resort to such recourse and compel the driver of the bus to pay a sum of Rs.2,000=00 on each trip by way of compounding fees. It is the say of the petitioner that there is no truth in the allegation that

the bus is being plied as stage carriage and not contract carriage. On the basis of the aforesaid averments, it has been prayed that the respondent authority be directed not to detain the vehicle bearing registration no. RJ 27 P 6788, on the ground of violation of the term of permit and also to issue appropriate direction to the authority and restrain them from detaining the vehicle on the said ground in future.

3. The petition has been contested by the respondents by filing affidavit. It is averred in the affidavit-in-reply that the petitioner has been regularly committing breach of the term of the permit and, therefore, his permit was liable to be suspended and/or cancelled, but it was not done since the driver of the bus showed willingness to pay the compounding fees of Rs.2,000=00. It is their say that the amount has been paid voluntarily to avoid detention of the vehicle and to ward-off the action and, therefore, now the petitioner cannot be permitted to say that the amount has been paid under compulsion. It is the say of the respondent that till 2nd August, 2006 on 25 occasions the bus was required to be detained and at that time the driver of the bus paid Rs.2,000=00 to allow him to proceed further. Along with the affidavit-in-reply, the respondents have annexed

a chart furnishing the details of the dates on which the vehicle was detained and also the amount paid and the receipt given to the driver for such payment. The chart is in respect to the aforesaid vehicle.

4. I have heard Mr. Vipul Pancholi learned advocate for the petitioner and Mr. Krunal Pandya learned A.G.P., for the respondents. It is submitted by Mr. Pancholi that there is no substance in the allegation levelled against the petitioner that the bus was being plied in contravention of the term of the permit. He has submitted that without making any inquiry, the checking officer has compelled the driver to pay a sum of Rs.2,000=00. It is submitted that under the provisions of Section 86 (5) of the Motor Vehicles Act, 1988 [hereinafter referred to as the “Act”], it is only the transport authority, as defined under Section 68 of the Act, which is empowered to initiate proceedings with regard to suspension or cancellation of the permit and it is the said authority which can accept the amount under sub-section (5) of Section 86 of the Act. It is his submission that the checking officer has acted beyond his powers. As against that Mr. Krunal Pandya has submitted that when there is breach of the term of the permit, the checking officer can exercise such power and if the driver or owner is

willing to pay the compounding fees, he can accept it. According to him, the petitioner has been regularly committing breach of the term of the permit and the payment that was made on each occasion was voluntary and not under any compulsion. He has submitted that when the amount is paid voluntarily, the petitioner cannot agitate this issue at a belated stage before this Court under article 226 of the Constitution of India.

5. I have carefully perused the record of the petition. I have also considered the submissions of the learned advocates. There is no dispute that the checking officer at Bhilad check post has detained the vehicle and he has allowed the vehicle to proceed further only upon receiving Rs.2,000=00 for which appropriate receipt has also been given to the driver. Whether the amount is paid under compulsion or voluntarily, is a disputed question of fact, which cannot be decided in this petition. However, the question that is required to be considered is whether the checking officer can recover the aforesaid amount by way of compounding fees from the driver or the owner of the vehicle for the alleged flouting of the term of the permit. Plying the vehicle in contravention of the term of the policy is made punishable under Section 192-A of the Act.

> “**Section 192-A : Using vehicle without permit** : (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of Section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both.
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> Provided that the Court may for reasons to be recorded, impose a lesser punishment.
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> (2) xxx xxx xxx xxx
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> Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.
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> (3) The Court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1) may set aside or vary any order made by the Court below, notwithstanding that no appeal lies against the conviction in connection with such order was made.]”

5.1. Thus, first breach resulting into commission of offence is made punishable with fine which may extend to five thousand rupees, but it should not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but it should not be less than three months or with fine which may

extend to ten thousand rupees, but shall not be less than five thousand rupees or with both. Section 200 of the Act provides for composition of certain offences.

> "**Section 200 : Composition of certain offences :** (1) Any offence whether committed before or after the commencement of this Act punishable under Section 177, Section 178, Section 179, Section 180, Section 181, Section 182, sub-section (1) or sub-section (2) of Section 183, Section 184, Section 186 [Section 189, sub-section (2) of Section 190]; Section 191, Section 192, Section 194, Section 196, or Section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by Notification in the Official Gazette, specify in this behalf.
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> (2) Where an offence has been compounded under sub-section (1) the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence."

5.2. Thus, it says that upon payment of compounding fees, the offence mentioned therein can be compounded. Section 192-A of the Act is kept out of the purview of this Section and it is placed in the category of non-compoundable offence. It is, therefore, obvious that the compounding fees can be recovered only for the commission of the offence which are mentioned in Section 200 of the Act. Section 192-A of the Act is kept out of the purview of Section 200 of the Act. Now it is the specific case of the respondents that since there is contravention of

condition of the permit relating to the route and also the purpose for which the vehicle permitted to be used it automatically attracts Section 86(5) and 192-A of the Act and, therefore, the petitioner has been rightly given the memo and called upon to pay Rs.2,000=00 by way of compounding fees. This is not at all permissible since only those offences which are mentioned in Section 200 of the Act can be compounded. Since Section 192-A of the Act is not included in the offences mentioned in Section 200 of the Act no compounding fees can be collected or charged for it. Further the offence can be compounded under Section 200 of the Act only by such officer or authority and for such amount as the State Government may, by Notification in the Official Gazette specify in this behalf. The affidavit-in-reply is completely silent whether the concerned checking officer has been granted authority by the State Government to act in accordance with the provisions of Section 200 of the Act. On that count also the checking officer could not have collected the compounding fees from the petitioner.

5.3. So far as Section 86 of the Act is concerned, it deals with cancellation and suspension of permits. It reads as under :-

“Section 86 : Cancellation and suspension of

> **permits** : (1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit."
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> xxx xxx xxx xxx xxx

Proviso to sub-section (1) states that permit cannot be suspended or cancelled unless opportunity is given to the holder of the permit to furnish his explanation.

Sub-section (5) thereof provides as under :-

> **"Section 86 (5)** : Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) pr clause (e) of sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover the holder of the permit the sum of money agreed upon."

5.4. Thus, it is obvious that the transport authority can resort to such action, if there is breach of any conditions specified in Section 86 of the Act or any conditions contained in the permit. However, suspension or cancellation cannot be ordered, unless an opportunity has been given to the holder of the permit to furnish his

explanation. It is the transport authority which has granted permit, can cancel or suspend it and it is that authority, after forming an opinion that having regard to the circumstances of the case, it would not be necessary or expedient to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, drop the proceedings of cancellation or suspension. The transport authority is defined under Section 68 of the Act. It provides that the State Government shall by Notification in the Official Gazette constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3) thereof and similarly and in like manner constitute R.T.A., for the regions specified in the Notification. Sub-section (2) of the Act prescribes who can be inducted on State Transport Authority. It is not the case of the respondent that the checking officer is the transport authority, as prescribed under Section 68 of the Act. There is also no dispute that no notice under Section 86 of the Act has been issued to the holder of the permit calling upon him to furnish the explanation why his permit should not be cancelled or suspended. There is also no dispute that there is no opinion formed by the transport authority as envisaged under Section 86(5) of the Act that though permit is liable to be

cancelled, having regard to the circumstances of the case, it would not be necessary or expedient to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money. It is the specific case of the respondent that the amount has been charged by way of compounding fees and that too by the checking officer posted at Bhilad check post. It is, therefore, clear that he had no authority to charge the compounding fees. Compounding fees can be charged only in pursuance of the provisions of Section 200 of the Act. Section 192-A of the Act does not fall within the ambit of Section 200 of the Act. Therefore, there is no question of charging compounding fees. As already stated above, even the amount which can be charged under Section 86 (5) of the Act is also without authority. It can be done only by the transport authority, which has issued the permit and that too upon forming opinion that is not necessary or expedient to cancel or suspend the permit but in lieu thereof to charge certain sum or money. When no notice has been give and the petitioner has not been called upon to show that why his permit should be cancelled or suspended, it can well be said that there is no action taken under Section 86 of the Act. Looking from both the angles the action of the checking officer of the respondent is beyond his power or authority and against

the provisions of law. Therefore, the action is bad in law and it is required to be quashed and set aside and it is hereby quashed and set aside.

6. The petition is allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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